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**Before the**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, DC 20554**

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| **In the Matter of** | ) | |
| | ) | **Public Notice** |
| **Proposed Revision of Maximum** | ) | |
| **Collection Amounts for Schools and** | ) | **CC Docket No. 96-45** |
| **Libraries and Rural Health Care Providers** | ) | **DA 98-872** |
| | ) | |

# COMMENTS

**MCI TELECOMMUNICATIONS CORPORATION**

**Mary J. Sisak**
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**Washington, DC 20006**
**(202) 887-2605**

**Dated: May 22, 1998**

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MCI Telecommunications Corporation
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## COMMENTS

MCI Telecommunications Corporation (MCI) hereby comments[1] on the Bureau's request for comment on the proposed revision of the 1998 collection amounts for schools and libraries and rural health care universal service support mechanisms.[2]

According to the Bureau, it "seeks comment on a proposal to implement a gradual phase-in of the schools, libraries and rural health care universal service support mechanisms that takes advantage, and reflects the timing, of access charge reductions, will provide substantial support and at the same time will minimize disruption to consumers."[3] The Bureau notes that if schools,

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[1] MCI is filing a copy of its Comments via diskette.

[2] See, Public Notice, DA 98-872, released May 13, 1998.

[3] Public Notice at p. 2.

libraries and rural health care support mechanisms are funded without regard for the timing of access charge reductions, carriers might change their rates more than once, thereby causing "excessive and unnecessary rate churn."[4]

In order to ensure that collection rates do not exceed access charge reductions and to prevent rate churn for subscribers, the Bureau seeks comment on a proposal to adjust the maximum amounts that may be collected and spent during 1998 for the schools, libraries and rural health care support mechanisms. Specifically, the Bureau estimates that based on preliminary information, access charges will be reduced on July 1, 1998 by approximately $700 million. Thus, the Bureau estimates that the quarterly collection rate for schools and libraries could rise from $325 million to approximately $524 million without increasing total access and universal service payments by long distance carriers, for a total funding of the schools and libraries program of $1.67 billion for the 1998 calendar year. The Bureau also proposes to keep the quarterly collection rate for the rural health care support mechanism at $25 million per quarter for the third and fourth quarters of 1998, for a total funding amount of $100 million for 1998.

It must be emphasized that, even if the Bureau adopts the proposed new collection levels, the need for a federal universal service fee on residential customers, effective July 1, 1998, will still exist because MCI is not recovering the current universal service charges from residential customers. As previously reported to the Commission, MCI intends to begin charging

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[4] Public Notice at fn. 13.

a universal service fee to residential customers effective in July, and intends to revise existing universal service fees charged to business customers to collect up to the level of the new contribution factors.

In this regard, MCI has informed the Commission of its constraints in implementing and notifying customers of changes in federal universal service costs that would be effective in July. Specifically, MCI must tariff a universal service fee for residential customers by June 1, 1998, in order to begin collecting the fee in July. Also, June 8, 1998, is the last date for Commission action on the contribution factors that would permit MCI to place an invoice message on the July invoices, contemporaneously with new or revised fees. Thus, the Commission must establish new contribution factors for the second half of 1998 as soon as possible, and in no event later than the last business day of May 1998 in order for MCI to implement them in July.

Finally, Commissioner Furchtgott-Roth asks about the effect of the Virginia State Corporation Commission (SCC) ordering MCI to stop applying federal surcharges on intrastate bills and revenues. On May 12, 1998, MCI's motion requesting a temporary restraining order of the Virginia SCC's order was granted. The Court, however, ordered that MCI cannot expand the scope of its assessment. Accordingly, it appears that MCI cannot assess residential customers in Virginia a federal universal service fee based on intrastate revenues and it cannot increase the fee assessed to business customers in Virginia.

These actions highlight the need for prompt Commission resolution of MCI's Petition for Declaratory Ruling,[5] filed on April 3, 1998, in which MCI requests that the Commission declare that carriers are not precluded by the Universal Service Order from imposing a charge on interstate customers that is based on the customers' total billed revenues, including intrastate revenues, to recover federal universal service costs. As stated by MCI in its Petition, it is the Commission that should advise the industry and the states concerning the correct interpretation of its orders. Remaining silent gives rise to the possibility of differing interpretations by the states, as demonstrated by the Virginia SCC action.

Respectfully submitted,

MCI TELECOMMUNICATIONS CORPORATION

By: 

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Mary L. Brown
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Washington, DC 20006
(202) 887-2605
Its Attorneys

Dated: May 22, 1998

[5] A copy of the Petition is attached.

**Before the**
**Federal Communications Commission**
**Washington, DC 20554**

| | |
|---|---|
| In the Matter of | ) |
| | ) |
| Petition for Declaratory Ruling That | ) |
| Carriers May Assess Interstate | ) |
| Customers an Interstate Universal | ) |
| Service Charge Which is Based on | ) |
| Total Revenues | ) |
| | ) |

## PETITION FOR DECLARATORY RULING

MCI Telecommunications Corporation (MCI) hereby requests that the Commission, pursuant to Section 1.2 of the Commission's rules, issue a declaratory ruling, on an expedited basis, finding that carriers are not precluded by the Universal Service Order[1] from imposing a charge on interstate customers that is based on the customers' total billed revenues, including intrastate revenues, to recover federal universal service costs.

## I. A DECLARATORY RULING IS NEEDED TO REMOVE UNCERTAINTY

Pursuant to Section 1.2 of the rules, the Commission may issue a declaratory ruling to terminate a controversy or remove uncertainty. A ruling is needed here to remove uncertainty in connection with how carriers can recover the cost of federal universal service. Specifically, MCI

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[1] Federal-State Joint Board on Universal Service, Report and Order, CC Docket No. 96-45, FCC 97-157, 12 FCC Rcd 8776 (rel. May 8, 1997) (Universal Service Order)

believes that its Federal Universal Service Fee (FUSF), which is assessed as a percentage charge on interstate customers' total MCI invoice, including intrastate usage, is in full compliance with the Commission's Universal Service Order.

It appears, however, that certain state commissions, including the Virginia State Corporation Commission (VSCC) and the Florida Public Service Commission (FPSC) may disagree. For example, although MCI's tariffed FUSF has been accepted by the Commission and, therefore, is effective, the VSCC initiated a proceeding in connection with a Motion for Rule to Show Cause (Motion)[2], in which the VSCC Staff challenges the manner in which MCI is recovering federal universal service costs and requests MCI to cease and desist from applying the FUSF to intrastate usage. By Order, the VSCC permitted MCI to respond to the Staff's Motion, and the matter is now pending before the VSCC.[3]

In addition, the FPSC Division of Communications has advised MCI that it believes that MCI is improperly assessing tariffed interstate charges on intrastate revenues in connection with the FUSF and, therefore, MCI should cease this practice immediately. If MCI does not cease this practice, the Division of Communications for the FPSC states that it may request the FPSC to issue a show cause order against MCI.

There are no facts in dispute in either of these cases. Rather, the VSCC and the FPSC simply disagree with MCI's interpretation of the Commission's Universal Service Order and its application of the FUSF against intrastate revenues of interstate customers. A Commission

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[2] Motion for Rule to Show Cause, Case No. PUC980024, March 13, 1998. (Attached hereto)

[3] Order Permitting Response, Case No. PUC980024, March 20, 1998.

decision on this declaratory ruling would avoid potentially unnecessary and duplicative litigation before the VSCC and FPSC.[4]

Moreover, it is MCI's understanding that various interexchange carriers have approached the tariffing of federal universal service charges in different ways and that other carriers may be following an approach similar to MCI's. A Declaratory Ruling is appropriate to ensure that, in a competitive marketplace, all carriers are proceeding with a common understanding of the Commission's requirements.

## II. THE ISSUE PRESENTED IS A QUESTION OF FEDERAL LAW AND SHOULD NOT BE RESOLVED BY THE STATES

The sole issue before the Commission is whether MCI's method of recovering federal universal service costs complies with the Universal Service Order. MCI does not seek a declaratory ruling concerning the amount of the FUSF. Rather, MCI only seeks a ruling as to whether it can apply the FUSF to intrastate revenues of interstate customers.[5] It is the Commission that should advise the industry and the states concerning the correct interpretation of its orders. To remain silent gives rise to the possibility of differing interpretations by the fifty states and the District of Columbia as well as infringements on federal jurisdiction.

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[4] To expedite this matter, MCI has served this Petition on the VSCC and the FPSC.

[5] MCI does not request a ruling on the lawfulness of its tariff. Rather, MCI seeks a declaratory ruling on the meaning of the Universal Service Order.

## III. A DECLARATORY RULING WILL HELP ENSURE UNIFORMITY IN TARIFFING PRACTICES BY IXCS

As stated, it is MCI's understanding that different carriers have tariffed the recovery of federal universal service costs in different ways and that other carriers may be following an approach similar to MCI's. A declaratory ruling will put all interexchange carriers on the same playing field. It also will inform MCI and other carriers that a particular tariffing practice is, or is not, lawful and, thus, minimize unnecessary expenditures to change billing systems --the cost of which is substantial-- at a later date. In this regard, it is important for the Commission to resolve this issue as soon as possible to enable MCI to explore and implement alternative tariffing and billing approaches, if need be, before July 1, 1998, when MCI intends to start applying the FUSF to residential customers.

## IV. MCI'S FUSF IS IN FULL COMPLIANCE WITH THE COMMISSION'S ORDERS

Thus, MCI requests that the Commission remove the uncertainty concerning the recovery of universal service costs by issuing a Declaratory Ruling finding that an interstate charge on interstate customers, that is assessed on total revenues, is in full compliance with the Universal Service Order.

In the Universal Service Order, the Commission stated that carriers can recover their contributions to federal universal service support through rates on interstate services only. Further, the Commission stated that carriers are "permitted... to pass through their contributions to their interstate access and interexchange customers."[6] Although the Commission declined to

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[6] Universal Service Order at para. 829.

create a single interstate fee that would be paid by basic residential dialtone subscribers, carriers were not precluded from creating such a fee to be assessed to their customers. Rather, the Commission left it to each carrier to determine how it would recover federal universal service costs. The Commission did not specifically address the issue of whether carriers could fund their universal service contributions through their federal tariffs based on customers' combined intrastate, interstate, and international revenues. However, that result is the logical implication of the decision and is consistent with the Commission's rationale for determining the contribution base for federal universal service.

Thus, in the Universal Service Order, the Commission found that it could assess federal universal service on interstate carriers. It also found that the Telecommunications Act permitted the Commission to require interstate carriers to pay into the fund based on total revenues. Accordingly, the Commission defined the contribution amount based on total revenues, including intrastate revenues, because the section 254 mandate covers both interstate and intrastate services. The Commission also found that it could include the international telecommunications revenues of interstate carriers within the revenue base. Thus, the inclusion of intrastate (as well as international) services into the FUSF calculus is fully justified.

In response to arguments that the Commission does not have jurisdiction to assess intrastate revenues of interstate carriers, the Commission stated that it "merely is calculating a federal charge based on both interstate and intrastate revenues, which is distinct from regulating the rates and conditions of interstate service."[7] According to the Commission, even when it exercises jurisdiction to assess contributions for universal service support from intrastate, in

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[7] Id. at para. 821.

addition to interstate revenues "such an approach does not constitute rate regulation of those services or regulation of those services so as to violate section 2(b)."[8] The Commission also found that "[t]here is no indication that Congress's authorization in section 254(f) of a separate support mechanism covering intrastate carriers evidences an intent that the amount of a carrier's contributions to the respective support mechanisms similarly should be based on the type of communications service, interstate or intrastate, provided by the carrier."[9]

In recovering its universal service costs from customers, MCI is simply following the Commission's rationale and approach. Thus, the rate MCI has established is an interstate rate that is imposed only on interstate customers. Imposing the FUSF on interstate customers' total billed revenues no more constitutes an interstate charge for an intrastate service than the Commission's universal service contribution requirement constitutes the interstate regulation of intrastate service. In addition, since a sizable portion of the federal universal service fund allocation is based on total revenues, not just interstate revenues, MCI's recovery mechanism also is based on total revenues in an effort to match its costs with cost causation. A recovery mechanism based only on interstate customers' interstate revenues would have to be greater than MCI's current FUSF to collect the same amount.

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[8] Id.

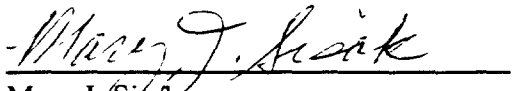
[9] Id. at para. 819.

## V. CONCLUSION

Based on the foregoing, MCI respectfully requests that the Commission issue a declaratory ruling on an expedited basis finding that carriers are not precluded from imposing a universal service charge on interstate customers that is based on the customers' total revenues.

Respectfully submitted

MCI Telecommunications Corporation

By: 

Mary J. Sisak
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(202) 887-2605
Its Attorneys

Dated: April 3, 1998

## CERTIFICATE OF SERVICE

I, Sylvia Chukwuocha, do hereby certify that a true copy of the foregoing Petition for Declaratory Ruling was served this 3rd day of April, 1998, by first-class mail, postage prepaid, upon each of the following persons:

Walter D'Haeseleer, Director
Division of Communications
State of Florida Public Service Commission
Capital Circle Office Center
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

William H. Chambliss
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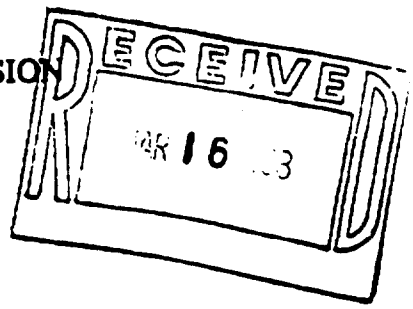
Senior Assistant Attorney General
Office of Attorney General
900 East Main Street
Richmond, VA 23219

Sylvia Chukwuocha

COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION




COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

v. CASE NO. PUC980024

MCI TELECOMMUNICATIONS CORPORATION
OF VIRGINIA

## MOTION FOR RULE TO SHOW CAUSE

The Telecommunications Act of 1996 ("Act") directed the Federal Communications Commission ("FCC") to establish "specific, predictable and sufficient mechanisms" to preserve and advance universal service. Every telecommunications carrier that "provides interstate telecommunications services" was directed to contribute to these "mechanisms." 47 U.S.C. § 254(d).

On May 8, 1997, the FCC released its Report and Order in CC Docket No. 96-45, In the Matter of Federal-State Joint Board on Universal Service. That order established the "specific, predictable and sufficient mechanisms" to provide funding for universal service preservation and advancement.

In the matter of funding the discounts for services to schools and libraries and other universal service programs,

the FCC stated, beginning at Paragraph 806 of the Report and Order:

> Nevertheless, the Joint Board was able to recommend that 'universal support mechanisms for schools and libraries and rural health care providers be funded by assessing both the intrastate and interstate revenues of interstate telecommunications services.'
>
> 807. Although we conclude that section 254 grants the Commission the authority to assess contributions for the universal service support mechanisms for rural, insular, and high cost areas and low income consumers from intrastate as well as interstate revenues and to require carriers to seek authority from states to recover a portion of the contribution in intrastate rates, we decline to exercise the full extent of our authority. The decision to decline to exercise the entirety of our authority is intended to promote comity between the federal and state governments and is based on our respect for the states' historical expertise in providing for universal service.
>
> . . .
>
> 809. The third dimension to our inquiry is whether carriers may recover their contributions to the universal service support mechanisms through rates for interstate services or through a combination of rates for interstate and rates for intrastate services. The Joint Board did not address this question. Because the Joint Board did not recommend that we authorize carriers to recover their contributions via rates for intrastate services, we conclude that at least for the present we should maintain our traditional method of pro-

viding for recovery, which permits carriers to recover their federal universal service contributions through rates for interstate services only. (Emphasis added.)

On February 25, 1998, following an investigation, Edward C. Addison, Director of the Division of Communications of the State Corporation Commission, sent the attached letter to Mr. C.K. Casteel, Vice-President of MCI Telecommunications Corporation of Virginia ("MCI" or "Company"), requesting that MCI cease and desist from applying a "'Federal Universal Service Fee' surcharge of 4.4 percent and a 'National Access Fee' surcharge of varying percentages to intrastate usage (calls) made by its customers in Virginia."[1] Mr. Addison pointed out to the Company that it had not filed a tariff nor effected the required customer notice to permit the imposition of said fees on intrastate services.

Subsequently, the Staff has concluded that there are other grounds upon which the imposition of said fees should be enjoined. In the matter of the "Federal Universal Service Fee," MCI is not only in violation of Commission tariff requirements, it is proceeding in direct contravention to the order of the FCC, which required

[1] "Federal Universal Service Fee" and "National Access Fee" are names composed by MCI. They are not "official" designations of the FCC.

carriers to recover their contributions to said fund from their "rates for interstate services only." Instead, MCI is currently applying a federally tariffed percentage-based surcharge to its customers' total bills, which include intrastate usage. Presently, MCI is collecting the "Federal Universal Service Fee" only from business customers, but has stated it intends to collect from residential customers via a similar surcharge mechanism (that would include intrastate usage), instead of through its "rates for interstate services only" beginning in July.

The Staff does not believe the FCC has authority, contrary to the assertion it made in Paragraph 807 of the Report and Order, to direct interstate carriers to adjust rates for intrastate services so as to recover this fee. However, even if the FCC did possess authority, it has not exercised that authority and indeed has specifically refrained from such exercise. However, even if the FCC had the exercised its putative authority over intrastate rates, and directed carriers to raise intrastate rates or impose fees based on intrastate rates to recover these contributions, MCI has failed, as noted by Mr. Addison, to adhere to Virginia rules regarding the implementation of these fees from intrastate services.

Insofar as the "National Access Fee"[2] is concerned, MCI is also in violation of current intrastate tariff requirements with respect to these charges, as applied to its small business customers in Virginia. For most of its customers, including residential customers, MCI is charging a per-line fee. However, for small business customers in Virginia this fee is recovered through a percentage surcharge based on these customers' total usage revenues, including intrastate usage. The Company has advised that beginning on April 1, it will begin collecting this fee from all its customers on a per-line basis, which would not require an intrastate tariff filing for implementation.

On March 4, 1998, representatives of MCI met with Staff to discuss Mr. Addison's letter and the issues subject of this Motion. At the conclusion of the meeting, counsel for MCI delivered the attached letter to Staff indicating that MCI would not comply with Mr. Addison's request. Instead, MCI intends to continue to apply the Federal Universal

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[2] The "National Access Fee" was designed by MCI to recover the Presubscribed Interexchange Carrier Charge ("PICC"). The PICC, a flat monthly per line charge established by the FCC as part of its access charge reform proceeding, is paid by IXCs to LECs to recover the interstate portion of non-traffic sensitive loop costs not recovered through the subscriber line charge (SLC). For 1998, the PICC is set at a maximum of 53¢ for residential primary lines and single-line businesses. Non-primary residential lines are assessed $1.50 each. Multi-line businesses are assessed $2.75 per line. MCI is, in most instances, assessing different fees to its customers. It contends that it is unable to discern the number of lines each of its customers has.

Service Fee and, until April 1, 1998, the National Access Fee illegally on its bills to Virginia customers.

WHEREFORE, the Staff of the State Corporation Commission moves the Commission to enter an order directing MCI to show cause, if it can, why it should not be enjoined from continuing to bill customers illegally for its "Federal Universal Service Fee" and "National Access Fee" and why it should not be required to refund to customers all amounts collected in excess of its tariffed rates.

Respectfully submitted,

The Staff of the
State Corporation Commission

By: /s/ William H. Chambliss
Counsel

William H. Chambliss, Deputy General Counsel
State Corporation Commission
Office of General Counsel
P.O. Box 1197
Richmond, Virginia 23218
(804) 371-9671

March 13, 1998

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing "Motion for Rule to Show Cause" was mailed first-class mail, postage prepaid, this 13th day of March, 1998, to: Beverley L. Crump, Registered Agent, 11 South 12th Street, P.O. Box 1463, Richmond, Virginia 23212; Prince I. Jenkins, Esquire, MCI Telecommunications Corporation of Virginia, 1133 19th Street, N.W., 11th Floor, Washington, D.C. 20036; and the Division of Consumer Counsel, Office of Attorney General, 900 East Main Street, Richmond, Virginia 23219.

MCI Telecommunications Corporation
May 22, 1998

**CERTIFICATE OF SERVICE**

I, Sylvia Chukwuocha, do hereby certify that copies of the foregoing Comments of MCI Telecommunications Communications in the Matter of Proposed Revision of Maximum Collection Amounts for Schools and Libraries and Rural Health Care Providers were sent, on this 22nd day of May, 1998, via first-class mail, postage pre-paid, to the following:

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Sylvia Chukwuocha